
Export Controls

Dual use, military goods and services

Exports of specific 'dual-use' items are subject to control under both European and National legislation. This includes items which may be used for military or civilian purposes. It covers a wide range of products and services such as certain 'high-tech' equipment, software, chemicals and pharmaceuticals as well as some support services and R&D.

Following "September 11th", administrations throughout the world are tightening up on the implementation of export control rules. The EU has strengthened the efficiency of its export control system, including controls relating to brokering, and controls on transit and transshipments. In addition, national authorities are reviewing their own legislation. Ireland has already introduced new national legislation.

European based companies can also be affected by US re-export controls as US rules extend well beyond US borders. For example, US export controls apply to US made items that are re-exported from one country to another, or even shipped from one end user to another within the same country. In addition, foreign affiliates of US companies must also comply with applicable US export restrictions and license requirements when exporting products which use US technology or software.

Many companies do not realise the broad applicability of the requirements and restrictions on exports. Compliance is not an issue that can be isolated to one department. Instead, it impacts the whole business including sales, human resources, information technology, legal, financing, and operations.

Tangible and Intangible Exports

Traditionally for customs purposes we think of an export as a tangible or physical transaction. However, for export control purposes an export also includes intangible exports (e.g. those by electronic means such as faxes, e-mails, downloads and in certain cases telephone conversations).

The advanced nature of some Research and Development (R&D) projects can result in technologies with possible application in military systems as well as finding civilian usages

Therefore, colleges and companies involved in 'state of the art' R&D should be aware of the control status of their work and also be aware that the sharing of their work with colleagues abroad may require to be licensed by the relevant authorities.

The onus on colleges and companies is to be fully converse in all applicable export controls and also to maintain records to support their activities. Best practice would recommend that they develop internal procedures to deal with export control compliance requirements.

Products which may need a license or may be subject to authorisations include software containing strong encryption, high specification computers and other electronic equipment or components, chemicals and pathogens and an extensive range of military specific items.

In addition to products specifically listed as controlled, other items may be controlled because of the “catch all” clause. Broadly speaking, this is where the exporter is aware that the items are or may be intended for use in the arena of weapons of mass destruction. Accordingly, there is an onus on the exporter to be knowledgeable of his customers and subsequently the intended end-use of the product by the specific consignee or ultimate end-user.

What is the Cost of doing Nothing?

While the changes increase the compliance obligations on businesses, non-compliance may result in considerable reputational damage, loss of business, export licences being revoked together with financial penalties and possible imprisonment.

Obligations of Outsourced Service Providers

If you are a sub-contractor or service provider to an exporter and engaged in any of the following activities relating to the export of dual use or military items or export related activities, you may, in your own right, be subject to export control legislation:

- Distribution functions for an exporter, including transportation
- Acceptance of customer orders
- Screening of such orders
- Preparing export documentation
- Record-keeping

How Can We Help

Many companies may be unaware of the scope of these controls and the obligations associated with them. Heavy penalties, in addition to negative publicity, may ensue if companies breach the rules.

We have a dedicated team of specialists who can provide support to you on all aspects of export controls. Our services to clients include:

- Analysis of European and national legislation and its application to specific business interests.
- Determination of EU or National export control list numbers and control status under EU or National legislation.
- Development and implementation of export compliance operational management systems (including procedural manuals).
- Provision of export control advice with support to supply chain restructuring activities.
- Advice on the most efficient license option where more than one applies and consideration of the use of open licenses
- Review of technical specifications of tangible and intangible dual use and military items (taking into account restrictions imposed on classified data).
- Liaising with national authorities on identified issues, including disclosures.
- Conduct audits either desktop or at the on-site locations of the exporter or outsourced party to determine compliance with EU and national export and US re-export control legislation, customs legislation and exporter business requirements.
- Pre-audit review and consultancy in preparation of audits carried out by national authority.
- Provide training services to exporters or outsourced partners’ export control teams.
- Risk management analysis.
- Advice and support on US re-export control legislation as it applies to companies dealing in US product and technology.
- Operational helpdesk support.

If you have any further queries relating to any of the items referred to in this document, please contact:



Jean Delaney
Partner
Customs and International Trade
Email: jean.delaney@ie.pwc.com
Tel: 353 1-792 6280



Anne Williams
Director
Customs and International Trade
Email: anne.c.williams@ie.pwc.com
Tel: 353-1-792 6528



John O'Loughlin
Manager
Customs and International Trade
Email: john.p.oloughlin@ie.pwc.com
Tel: 353-1-792 6093

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers does not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

© 2011 PricewaterhouseCoopers. All rights reserved. “PricewaterhouseCoopers” refers to the Irish firm, PricewaterhouseCoopers, One Spencer Dock, North Wall Quay, Dublin1 which is authorised by the Institute of Chartered Accountants in Ireland to carry on investment business. As the context requires, “PricewaterhouseCoopers” may also refer to one or more member firms of the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate legal entity. PricewaterhouseCoopers does not act as agent of PwCIL or any other member firm nor can it control the exercise of another member firm’s professional judgment or bind another member firm or PwCIL in any way. Designed by PwC Design Studio 03253.